

WAGE WITHHOLDING FOR DEFAULTED STUDENT LOANS

A HANDBOOK FOR EMPLOYERS



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

NICK A. KHOURI
STATE TREASURER

To Employer:

This page provides a brief summary of the Administrative Wage Garnishment ("AWG") process; details and instructions to help you comply are contained in the following pages. Please read all materials carefully.

Use the Employer Acknowledgement form to confirm receipt of the Order promptly after receipt, even if the person no longer works for you. Remember to provide the information requested on the form if you claim that the person no longer works for you.

The Federal Family Education Loan Program (FFELP), which encourages private capital to fund low interest loans for postsecondary education, is administered by guaranty agencies, such as the Michigan Guaranty Agency, on behalf of the Federal government. One of the methods by which the Michigan Guaranty Agency collects payment on those FFELP loans that go into default is through AWG, which permits garnishment without a court order. A Federal statute (20 USC 1095a et. seq.) that overrides state law authorizes this process. A copy of that Federal statute, the implementing regulations [34 CFR 682.410(b)(10)] and a letter from the Department of Education addressing AWG authorization is attached.

This Handbook accompanies an Order of Withholding sent to you with respect to one or more persons who our records indicate work for you. Before the Order of Withholding was sent, the employee(s) was notified and given an opportunity to review the Michigan Guaranty Agency's records relating to the debt to resolve the debt voluntarily and to have a hearing concerning the debt.

Federal law makes you liable for amounts you fail to withhold from your employee's wages after you received the Order. However, you are not required to vary your normal pay/disbursement cycles. Also, the law prohibits you from discharging, refusing to employ or taking disciplinary action against the employee just because his/her wages have been made subject to the AWG process.

Unless a lesser amount has been ordered after an AWG hearing or the borrower has agreed to a greater amount, the law permits garnishment of up to 15% of disposable pay for the pay period, subject to an aggregate maximum of 25% and a protected "floor" of 30 times the Federal minimum hourly wage per work week (see 15 USC 1673). This Handbook contains a worksheet and instructions to help you calculate the proper amount. Any lesser amount ordered after an AWG hearing, or any greater amount agreed to by the borrower, is reflected in the Order and should be used instead of using the worksheet.

Collection of defaulted student loans is important to the continued success of the FFELP and benefits the taxpayer whose tax dollars support the FFELP, the employer who gains access to a more educated workforce and, perhaps most important, the next generation of students for whom the FFELP means the ability to pursue their educational dreams.

Thank you for your anticipated cooperation. If you have any questions, please call AWG Unit, Michigan Guaranty Agency, Collections Division, P.O. Box 30047, Lansing, Michigan 48909-7547, 1-800-642-5626 extension 60610.

Employer Withholding Instructions

Before the Order of Withholdings from Earnings (“Order”), which accompanies this Handbook, was sent to you, the debtor was sent several notices, including a “Notice Prior to Wage Withholding”. As required under Federal law (20 USC 1095a et. seq.), it explained the Michigan Guaranty Agency’s intent to send the Order to you and gave the debtor an opportunity (a) to inspect and copy the Michigan Guaranty Agency’s records regarding the debt; (b) to have a hearing concerning the existence or the amount of the debt and, except in certain instances, the terms of the repayment schedule; and (c) to avoid withholding by entering into a voluntary repayment agreement.

In general, you will have received the Order because either (a) the debtor did not request such a hearing within the time required under the law; or (b) a hearing was held and the Hearing Officer determined that the debtor did not have sufficient grounds to prevent garnishment. In some cases, the hearing may have resulted in a modification of the garnishment, in which case the Order sets forth a specific amount or percent to be withheld and whatever other conditions or limitations may apply.

Steps you must take:

1. **Check** the debtor’s name and social security number contained in the Order against your records and **complete and return** the Employer Acknowledgment of Wage Withholding form (“Acknowledgement”) immediately. Your liability for withholding begins when you receive the Order, not when you submit the Acknowledgement.
 - If, when you receive the Order, you no longer are obligated to pay the debtor (for example, because the debtor’s employment was involuntarily terminated or the debtor left for another job) promptly complete and submit the Acknowledgement, including the debtor’s last known address and, if known, the name and address of the debtor’s new employer, if any.
 - If your obligation to pay the debtor ends after you have received the Order, promptly complete and submit a Notice of Change of Employment form to provide us with the basis for issuing you a Release of Order of Withholding (“Release”). Remember that income earned up to the termination date and any other compensation, such as severance pay, are subject to withholding.
2. **Calculate and deduct** the amount to be withheld for each pay period, beginning with the first pay period that occurs after you received the Order, using the AWG WITHHOLDING WORKSHEET. **NOTE:** if the Order specifies the amount to be withheld, or if a Modification of Order has been issued (see “Multiple Withholdings” below), you do not need to use the WORKSHEET.
3. **Submit the amount withheld**, payable to Michigan Guaranty Agency, P.O. Box 7074, Indianapolis, Indiana 46207-7074. Be sure each check includes (a) debtor name and Social Security number; (b) employer name and Federal Employer Identification Number; and (c) notation indicating that it is a wage withholding payment. If you are making payments for two or more debtors, you may combine payments as long as the check stub or transmittal sheet properly identifies the amount remitted for each employee.
4. **Repeat steps 2 and 3** for each pay period until (a) the Michigan Guaranty Agency provides you with a Release; or (b) your obligation to pay the debtor ends. Although deductions are to be made at each pay period, remittance need only be made once each month. You are not required to change normal pay and disbursement cycles to comply with the Order.

Multiple Withholdings*:

Limitations:

If the debtor is subject to multiple garnishments during a pay period, Federal law (see 15 USC Section 1673 and F.A.Q. #1, below) may limit your ability to withhold, for that pay period, the full amount called for under the Order. If so, you must inform us, in writing, immediately.

Priorities:

Generally, garnishments must be satisfied in the order in which they are issued to the employer, up to the maximum amount subject to that kind of garnishment order.

- Be sure to check the effective duration of any state law garnishments. Many of them remain in effect only for a limited time; when they lapse, the next-in-line garnishment would take over.
- Federal student loan garnishments (such as the Order) do not have duration limitations; they do not end until (a) the debt is paid in full (NOTE: the total amount the debtor owes is more than the amount indicated in the Order under “ Total Amount Currently Due” because, among other things, interest continues to accrue); (b) your obligation to pay the debtor otherwise has ended; (c) a bankruptcy “ stay” suspends the garnishment; or (c) the debt is discharged or otherwise resolved.
- Garnishments for child support or IRS levy take precedence over withholding for student loan debts, regardless of when they begin. If you receive a garnishment order for child support or IRS levy after you have received our AWG Order, contact the AWG Unit at 1-800-642-5626.

* This information reflects the Michigan Guaranty Agency's understanding concerning the general aspects of multiple withholding under AWG but is not intended as legal advice.

Your compliance is mandatory:

Federal law [(20 USC 1095a(a)(6))] makes you liable for any amount that you should, but do not, withhold following receipt of the Order. The Michigan Guaranty Agency may sue you in State or Federal court to recover those sums, together with attorney's fees, costs and, in the court's discretion, punitive damages. Under that same law [(20 USC 1095a(a)(8)], you may not discharge, refuse to employ, or take disciplinary action against an individual just because that individual is subject to AWG. That individual may sue you if you take such action and, if he or she prevails, the court will award attorney's fees and, in its discretion, may order, among other things, reinstatement, punitive damages and back pay.

Termination of the debtor's employment after you receive the Order does not terminate your liability for amounts you were supposed to have withheld.

F.A.Q and Inquiries:

1. If someone else already is garnishing my employee's disposable pay, do I still have to comply with the AWG Order?

Yes, but the amount you must withhold may be reduced. The law (15 USC § 1673) imposes a maximum on how much can be garnished at any one time; currently, that maximum is 25% of the employee's disposable pay. So if that current garnishment is taking, for example 20%, the AWG Order (assuming it is next in line) is still operable to the extent of the remaining 5% of the employee's disposable pay. On the other hand, if the prior garnishment(s) account for 25%, then nothing would have to be withheld on the AWG Order, at least until the prior garnishment(s) were satisfied or expired.

Remember: that same Federal law also protects from garnishment a "floor" level of income equal to 30 times the minimum wage per week.

Remember: some garnishments expire (AWG Orders do not) even before the full amount has been paid, and once a prior garnishment expires (or is satisfied) the next garnishment usually takes over.

2. The AWG Order is not signed do I have to honor it?

Yes. The law (20 USC § 1095a) does not require that the Order must be signed to be valid and legally binding. However, if you have any question about the Order's authenticity, please contact Michigan Guaranty Agency, AWG Unit, P.O. Box 30047, Lansing Michigan 48909-7547, 1-800-642-5626 extension 30025.

3. I am told that my state law forbids wage garnishment, so can't I just ignore the AWG Order?

No. AWG is authorized by a Federal law (20 USC § 1095a) which specifically preempts State law.

4. What are the consequences if I fail to comply?

A non-compliant employer will be liable for, and subject to suit by the Michigan Guaranty Agency to recover, any amount that the employer fails to withhold after receipt of notice of the AWG Order, plus attorney fees, costs and at the court's discretion, punitive damages.

5. Can I impose a fee for administering this? If I can, who pays?

That depends on the state; Michigan law does not permit the imposition of a fee or a charge on the employee. Federal law does not address the issue. You should check your state's law.

6. (IF APPLICABLE) The Order directs that I send the payments to someone other than the Michigan Guaranty Agency. Is that OK?

Yes. Guaranty agencies, such as the Michigan Guaranty Agency are permitted to retain others to aid in the administration of the AWG process, including the collection of payments under an Order.

Employers with additional questions about wage withholding for defaulted student loans should contact:

Michigan Guaranty Agency
AWG Unit
P.O. Box 30047
Lansing, MI 48909-7547
1-800-642-5626 extension 30025

§ 1095a Wage Garnishment Requirement

(a) Garnishment Requirements

Notwithstanding any provisions of State Law, a guaranty agency, or the Secretary in the case of loans made, insured or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42 that are held by the Secretary, may garnish the disposable pay of an individual to collect the amount owed by the individual, if he or she is not currently making required repayment under a repayment agreement with the Secretary, or, in the case of a loan guaranteed under part B of this subchapter on which the guaranty agency received reimbursement from the Secretary under section 1078(c) of this title, with the guaranty agency holding the loans, as appropriate, provided that –

- (1) the amount deducted for any pay period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted with the written consent of the individual involved;
- (2) the individual shall be provided written notice, sent by mail to the individual's last known address, a minimum of 30 days prior to the initiation of proceedings, from the guaranty agency or the Secretary, as appropriate, informing such individual of the nature and amount of the loan obligation to be collected, the intention of the guaranty agency or the Secretary, as appropriate, to initiate proceedings to collect the debt through deductions from pay, and an explanation of the rights of the individual under this section;
- (3) the individual shall be provided an opportunity to inspect and copy records relating to the debt;
- (4) the individual shall be provided an opportunity to enter into a written agreement with the guaranty agency or the Secretary, under terms agreeable to the Secretary, or the head of the guaranty agency or his designee, as appropriate, to establish a schedule for repayment of the debt;
- (5) the individual shall be provided an opportunity for a hearing in accordance with subsection (b) of this section on the determination of the Secretary or the guaranty agency, as appropriate, concerning the existence or the amount of the debt, and, in the case of an individual whose repayment schedule is established other than by a written agreement pursuant to paragraph (4), concerning the terms of the repayment schedule;
- (6) the employer shall pay to the Secretary or the guaranty agency as directed in the withholding order issued in this action, and shall be liable for, and the Secretary or the guaranty agency, as appropriate, may sue the employer in the State or Federal Court of competent jurisdiction to recover, any amount that such employer fails to withhold from wages due an employee following receipt of such employer of notice of the withholding order, plus attorney's fees, costs, and in the court's discretion, punitive damages, but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph;
- (7) if an individual has been reemployed within 12 months after having been involuntarily separated from employment, no amount may be deducted from the disposable pay of such individual until such individual has been reemployed continuously for at least 12 months; and
- (8) an employer may not discharge from employment, refuse to employ or take disciplinary action against an individual subject to wage withholding in accordance with this section by reason of the fact that the individual's wages have been subject to garnishment under this section, and such individual may sue in a State or Federal court of competent jurisdiction any employer who takes such action. The court shall award attorney's fees to a prevailing employee and, in its discretion, may order reinstatement of the individual, award punitive damages and back pay to the employee, or order such other remedy as may be reasonably necessary.

(b) Hearing Requirements

A hearing described in subsection (a)(5) shall be provided prior to issuance of a garnishment order if the individual, on or before the 15th day following the mailing of the notice described in subsection (a)(2), and in accordance with such procedures as the Secretary or the head of the guaranty agency, a petition requesting a hearing prior to such date, the Secretary or the guaranty agency, as appropriate, may prescribe, files a petition requesting such a hearing. If the individual does not file a petition requesting a hearing prior to such date, the Secretary or the guaranty agency, as appropriate, shall provide the individual a hearing under subsection (a)(5) upon request, but such hearing need not be provided prior to issuance of a garnishment order. A hearing under subsection (a)(5) may not be conducted by an individual under the supervision or control of the head of the guaranty agency, except that nothing in this sentence shall be construed to prohibit the appointment of an administrative law judge. The hearing official shall issue a final decision at the earliest possible date, but not later than 60 days after the filing of the petition requesting the hearing.

(c) Notice Requirements

The notice to the employer of the withholding order shall contain only such information as may be necessary for the employer to comply with the withholding order.

(d) “Disposable Pay” Defined

For the purpose of this section, the term “disposable” pay means that part of the compensation of any individual from an employer remaining after the deduction of any amounts required by law to be withheld.

(Pub.L. 89-329, title IV § 488A, as added Pub.L. 102-164, Title VI. § 605(a), Nov. 26, 1994, 105)

UNITED STATES DEPARTMENT OF EDUCATION
Office of Post Secondary Education

SUMMARY: Wage Garnishment withholding orders sent to employers pursuant to 34 CFR 682.41(b)(10) may be issued by guarantee agencies.

Dear Guarantee Agency Director:

We have recently received questions from a number of sources concerning whether administrative wage garnishment functions may be performed by a guarantee agency's contractor. The contractor to which the question refer is the collection contractor retained and paid by the agency on a contingent fee basis for services, including those performed in connection with administrative wage garnishment. The following comments are intended to clarify how the Department considers applicable law to affect the use of such contractors to perform wage garnishment functions.

In general, the FFEL program regulations authorize guarantors to perform the various actions in the sequence of collection activities required as part of due diligence in collecting defaulted loans. The Department does consider applicable law to permit a guarantee agency to use a contractor to perform, on the agency's behalf many of the activities needed for the agency to collect by administrative wage garnishment under 34 CFR 682.41(b)(10). Such administrative activities include the identification of suitable candidates for wage garnishment if done in accordance with specific standards adopted by the guarantee agency; obtaining employment information on these individuals for the exclusive purpose of garnishment; sending candidates selected for garnishment a notice prescribed by the agency that explains the garnishment action the alternate repayment arrangement; responding to inquiries from notified candidates regarding requests for documents pertaining to the debt, for a hearing, or for repayment arrangements, and negotiating such arrangements; and receiving garnishment payments from a debtor's employer.

Under no circumstances may an employee or an individual affiliated with collection contractor conduct a hearing on an objection raised by the debtor either to the debt itself or to the proposed withholding schedule. The contractor may help the guarantee agency secure the services of qualified Hearing Officers. However, the Officer acts exclusively to satisfy the guarantor's obligation to provide an independent hearing; if the contractor facilitates the retention of a Hearing Officer by the guarantor, any written agreement or communication among those parties or with the debtor must clearly reflect the independence of the Hearing Official not only from the guarantor but from the contractor.

The guarantor, and not the contractor, must issue a withholding order to an employer in these proceedings. The contractor may recommend that particular garnishment orders be issued, may prepare orders for review and execution by the guarantor, and may mail orders executed by the guarantor. A duly authorized official of the guarantor must determine that an individual withholding order should be issued; the official may evidence that determination by signing the order or, if the guarantor uses a form of withholding order that does not provide for execution by signature, by recording the approval in some other form in the guarantor's records. To facilitate compliance with the order, the withholding order itself should state that the guarantor is the holder of the debt, and that the guarantor is legally authorized to issue the order pursuant to express statutory authority conferred on the guarantor by section 488A of the Higher Education Act of 1965, as amended. To avoid misconceptions and thereby facilitate compliance with the order by the employer, the order should not contain captions, representations, or directions that state or imply that the contractor is the party that issued, or was empowered by Federal law or by the guarantor to issue, the order.

The Department has received from employers served with garnishment orders a number of inquiries regarding the identity and authority of particular guarantors. To assist in confirming the identity and authority of each guarantor, we enclose here a statement on Department letterhead confirming that the guarantor is a duly authorized guarantee agency and empowered by Federal law to issue the withholding order; copies of this letter may be attached to individual orders.

Adequacy of service of the garnishment order on the employer has also been questioned. Neither the statute nor the regulations mandate the use of a particular manner of service of the garnishment order, but the importance of ensuring that the order has been received by the employer strongly suggests that certified mail be used to serve garnishment orders.

We appreciate your assistance and cooperation as we work to implement the provisions.

Sincerely,

Pamela A. Moran
Chief, Loans Branch
Policy Development Division
Policy, Training and Analysis Service

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

830 First Street, NE
Union Center Plaza
Washington, D.C. 20202

The following organizations have agreements with the U.S. Department of Education to participate in the Federal Family Education Loan (FFEL) Program as guaranty agencies under Section 428(b) of the Higher Education Act of 1965, as amended (HEA). The guaranty agencies on this list are authorized by section 488A of the HEA, to issue administrative wage garnishment withholding orders at a rate of 15% to employers, to recover FFEL debts owed by individuals who have defaulted on their student loan repayment obligations. This authority does not apply to Federal agencies or their employees.

AMERICAN STUDENT ASSISTANCE (MASSACHUSETTS)
STUDENT LOAN GUARANTEE FOUNDATION OF ARKANSAS
CALIFORNIA STUDENT AID COMMISSION
COLORADO STUDENT LOAN PROGRAM
CONNECTICUT STUDENT LOAN FOUNDATION
EDUCATION ASSISTANCE CORPORATION (SOUTH DAKOTA)
EDUCATIONAL CREDIT MANAGEMENT CORPORATION
FLORIDA DEPARTMENT OF EDUCATION/OFFICE OF STUDENT FINANCIAL ASSISTANCE
GEORGIA HIGHER EDUCATION ASSISTANCE FOUNDATION
GREAT LAKES HIGHER EDUCATION CORPORATION (WI)
ILLINOIS STUDENT ASSISTANCE COMMISSION
IOWA COLLEGE STUDENT AID COMMISSION
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
LOUISIANA OFFICE OF STUDENT FINANCIAL ASSISTANCE
FINANCE AUTHORITY OF MAINE
MICHIGAN HIGHER EDUCATION ASSISTANCE AUTHORITY
MISSOURI DEPARTMENT OF HIGHER EDUCATION
MONTANA GUARANTEED STUDENT LOAN PROGRAM
NATIONAL STUDENT LOAN PROGRAM (NEBRASKA)
NEW HAMPSHIRE HIGHER EDUCATION ASSISTANCE FOUNDATION
NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY
NEW MEXICO STUDENT LOAN GUARANTEE CORPORATION
NEW YORK STATE HIGHER EDUCATION SERVICES CORPORATION
NORTH CAROLINA STATE EDUCATION ASSISTANCE AUTHORITY
STUDENT LOANS OF NORTH DAKOTA
OKLAHOMA GUARANTEED STUDENT LOAN PROGRAM
OREGON STUDENT ASSISTANCE COMMISSION
AMERICAN EDUCATION SERVICES/PHEEA
RHODE ISLAND HIGHER EDUCATION ASSISTANCE AUTHORITY
SOUTH CAROLINA STUDENT LOAN CORPORATION
TENNESSEE STUDENT ASSISTANCE CORPORATION
TEXAS GUARANTEED STUDENT LOAN CORPORATION
USA FUNDS
UTAH HIGHER EDUCATION ASSISTANCE AUTHORITY
VERMONT STUDENT ASSISTANCE CORPORATION
NORTHWEST EDUCATION LOAN ASSOCIATION (NELA)



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

NICK A. KHOURI
STATE TREASURER

Example

Account Number:
Account Name:
Date of Withholding Order
Date:

**NOTICE OF CANCELLATION
OF ORDER FOR WITHHOLDING OF WAGES**

The Order for Withholding on Employee Wages issued by the Michigan Guaranty Agency (MGA) on the above date for the above referenced employee is canceled. MGA requests that you cease any further action to withhold or remit wages pursuant to this order.

Please contact the AWG Unit number listed below if you have any questions.

AWG Unit: Michigan Guaranty Agency
Collection Division
P.O. Box 30047
Lansing, MI 48909-7547
1-800-642-5626
Extension: 30025

Sincerely,

Collections Unit
Michigan Guaranty Agency